



## What is the Importance of Entering into a Non-Compete Agreement?

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### Abstract

This article analyzes the essence of non-competition agreements with employees and considers options for introducing the conditions for introducing this institution into the legislation of the Republic of Uzbekistan. A comparative analysis of foreign jurisdictions was carried out on the basis of the experience of France, Germany and Kazakhstan in applying the construction of an agreement on non-competition with employees, the advantages and disadvantages of using the agreement with employees in question were considered, principles and mechanisms for introducing non-competition agreements with employees into national legislation were proposed.

**Keywords:** Non-Competition, Agreement, National Law, Conflicts, Concept, Payments, Contracts

### I. Introduction

Competition is a necessary condition in business relations all over the world. When it comes to labor relations, business entities agree to non-compete clauses. Non-competition refers to the obligation of the employee not to be employed by an organization competing with the employer during the period of employment or at the time of termination of employment, as well as not to establish a competing organization. Non-competition (non-kompit - non sompete) is implemented by concluding an agreement. Non-competition agreement (Non-competition agreement) is an agreement that one of the parties must refrain from actions aimed at competition by means of specific knowledge and skills acquired as a result of cooperation with the other. For example, if you work at Beeline, you are restricted from moving to UMS or from Coca-Cola to Pepsi-Cola, or any other competing company [1].

### II. Methodology

If you violate this restriction, then you must be prepared to bear the appropriate responsibility (pay for damages). It should be noted that we are talking about non-competition related to labor relations. However, it should be mentioned that the possibility of concluding a non-compete agreement under our national law is questionable. Because the labor contract is a contract that has certain characteristics and applies labor law, it is not possible to specify any agreements. It is especially difficult when it is not directly related to work [2]. In civil legal



relations, a non-competition agreement can be easily concluded between business entities or legal entities, and they belong to the group of unnamed contracts in civil law.

In countries with a developed market economy, special importance is attached to this agreement in order to protect the employer's production and trade secrets and ensure a healthy competitive environment. In the labor legislation of Western European (Belgium, Germany, France, Spain, Italy) and Eastern European countries (Georgia, Czech Republic, Romania), there is a concept of non-compete agreement. In particular, the agreement not to compete in the countries of the Commonwealth of Independent States is reflected in Article 29 of the newly adopted Labor Code of the Republic of Kazakhstan (2016) and Article 38 of the Labor Code of Lithuania (2017).

### **III. Results**

Non-compete agreements in Uzbekistan are not regulated by laws or regulations. However, the Labor Code, the Law "On Trade Secrets", the Model Regulation on the Compliance with the Trade Secret Regime for Enterprises and Organizations who's Employees Use Trade Secrets has provisions on the protection of the employer's trade secrets by employees. In particular, Article 202 of the Labor Code imposes full financial responsibility on the employee when a trade secret is disclosed. Usually, in such cases, an agreement on full financial responsibility is concluded with the employee in addition to the employment contract. This mechanism imposes an obligation on the employee not to disclose trade secrets, but it does not prevent the employee from moving to a competing company [3].

In addition, the employee's obligations not to disclose commercial secrets shall cease to have effect upon termination of the employment contract. Such an arrangement weakly protects the interests of employers in the context of free competition. Therefore, it is time to consider introducing the agreement on non-competition into the labor legislation of Uzbekistan. It is only necessary to admit that there is one big problem here. Even so, an agreement not to compete with an individual's right to free labor is a conflict of law. However, there are different views on this issue. One of these is the view that a non-competition agreement is not a complete restriction of an individual's employment rights, but rather is permissible if certain negative consequences are likely to result [4].

In addition, in accordance with this agreement, the employee can receive a fee from the employer if he does not join a competing company for a certain period of time. This practice is currently practiced in many countries. As a conclusion, it can be said that at the moment the labor legislation of Uzbekistan does not allow non-compete (non sompete). The inclusion or attachment of non-compete clauses



in an employment contract is considered a violation of the rights of employees under laws and contracts. But such views are already outdated for the modern world. Therefore, in order to use the best experience in this regard, it is proposed to include the norms on the agreement on non-competition in the chapter "Labor contract" of the new Labor Code of the Republic of Uzbekistan [5].

#### **IV. Discussion**

The relevance of the topic presented in the study is due, first of all, to the absence of extensively covering this case of norms and acts in the legislation of the Republic of Uzbekistan. Due to the increase in the number of enterprises and increased competition, employers have a risk of leaking information about internal production processes and techniques as a result of an employee moving to a competing enterprise. In addition, the relevance of this topic arises not only from the need for scientific study, but also from the need to regulate, from a practical point of view, issues regarding the employer's protection of his interests. In order to prevent such cases from occurring, foreign legal systems have legislation that allows employers to enter into non-competition agreements [6].

This research examines the basics of concluding an employment contract with employees, through the use of comparative analysis using the example of positive experience of foreign countries, and offers individual examples of how a non-competition agreement can be introduced into the terms of an employment contract, without infringing on the rights of the employee. A non-competition agreement is a fairly effective tool that helps achieve a balance of interests of the parties to labor relations, as evidenced by its successful performance in the laws of foreign countries. It should be noted that today the use of such structures in Uzbekistan is only a proposal, which requires testing its effectiveness with time and practice. However, modern conditions for the implementation and regulation of labor law must take into account the realities of economic and social practices [7].

Having studied from the theoretical and practical side the essence of the design of non-competition agreements, lawsuits, the rights of employers and employees in the field of protection of trade secrets, international labor standards, and also having analyzed the methods and means of protecting the rights of employers and employees by national legislation, the following scientific proposals should be highlighted and practical recommendations: According to Z. Bekmuradova, it would be more appropriate to give the following definition of the essence of a non-competition agreement: "A non-competition agreement with employees is an agreement, or an additional condition of the employment contract, according to which the employee undertakes not to carry out actions that could cause damage to the employer. Such actions include transfer and disclosure of confidential information, transfer to a competitor's enterprise, poaching clients of a



former employer, poaching employees, and so on” [8].

Having examined the concept of non-competition agreements, its main features were highlighted:

- Effect on labor relations between the employer and employees, who are likely to subsequently enter into a contract with a competing enterprise;
- Limited time and space;
- Payment of remuneration for fulfilling obligations under a non-competition agreement with employees;
- Application of sanctions by the employer to employees in case of violation of the terms of the non-competition agreement.

Consequently, these principles may vary and be supplemented by other conditions depending on the legislation of the state, limiting and expanding the conditions for its application. But the principles discussed are the basis for applying the institution of non-competition agreements with employees [9]. In order to regulate the validity of the type of contract in question, a non-competition agreement should be concluded in writing, or included in the terms of the employment contract. It should be borne in mind that if a non-competition clause with employees is included in an employment contract, it may lose force after the termination of the employment relationship with the employee, therefore the employer is not insured in the employee's compliance with the terms of this agreement [10].

As an alternative, you can conclude a non-competition agreement with employees in parallel with the conclusion of an employment contract as an additional agreement, while explaining the essence of the agreement in question so that the employee consciously enters into this agreement; this will help in the future to insure the employer in the event of labor disputes. Next, you should limit the maximum duration of the non-compete agreement, as this will help prevent employers from abusing the non-compete clause with employees. The optimal term for the contract in many countries is up to 2-3 years. Consequently, in Uzbekistan such a maximum period would be optimal to establish [11].

### **Conclusion**

It should be noted that the institution in question operates only within the territory of the Republic of Uzbekistan and it cannot be used outside its borders unless it is provided for by law. It is important to identify the category of employees with whom a non-competition agreement can be concluded. In turn, this can help reduce conflicts and eliminate abuse of rights. Another solution to apply this agreement in national legislation may be the establishment of compensation



payments to employees for fulfilling obligations under a non-competition agreement. This can encourage workers to adhere to the terms of the contract and reduce the likelihood of violations and incidents, disputes over non-compliance with the non-compete clause.

For example, if an employee refrains from joining a competitor for a certain period after the termination of the employment contract, then he will receive compensation payments in a certain amount for a certain period until the expiration of the non-compete agreement. It is necessary to determine at the legislative level the procedure for establishing the minimum amounts of such compensation to employees, the mechanisms for calculating and determining by employers the appropriate payments to employees for fulfilling obligations under a non-competition agreement.

In order to regulate the validity of the non-competition agreement, it is necessary to develop a resolution of the Plenum of the Supreme Court “On the practice of applying legislation on non-competition agreements with employees when considering cases in courts.” This regulatory act would help to most clearly reveal the ways of applying a non-competition agreement with employees in labor relations, since the presence of by-laws contributes to the clearest interpretation of the essence and ways of operation of contracts and legal consequences.

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